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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/664,426	08/26/2003	Bharat Jani	WLCO 0176 PUS	4538
23869 7590 06/19/2007 HOFFMANN & BARON, LLP 6900 JERICHO TURNPIKE SYOSSET, NY 11791			EXAMINER CORBIN, ARTHUR L	
			ART UNIT 1761	PAPER NUMBER
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.



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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 10/664,426  
Filing Date: August 26, 2003  
Appellant(s): JANI ET AL.

**MAILED**  
**JUN 15 2007**  
**GROUP 1700**

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Jamie Larmann  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed April 5, 2007 appealing from the Office action mailed November 9, 2006.

Art Unit: 1761

**(1) Real Party in Interest**

A statement identifying by name the real party in interest is contained in the brief.

**(2) Related Appeals and Interferences**

The following are the related appeals, interferences, and judicial proceedings known to the examiner which may be related to, directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal:

Serial No. 10/664,427

**(3) Status of Claims**

The statement of the status of claims contained in the brief is correct.

**(4) Status of Amendments After Final**

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

**(5) Summary of Claimed Subject Matter**

The summary of claimed subject matter contained in the brief is correct.

**(6) Grounds of Rejection to be Reviewed on Appeal**

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

**(7) Claims Appendix**

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(8) Evidence Relied Upon**

The following is a listing of the evidence (e.g., patents, publications, Official Notice, and admitted prior art) relied upon in the rejection of claims under appeal.

4,250,196	Friello	2-1981
3,062,662	McDonald	11-1962

**(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

Claims 22-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Friello, U.S. Patent 4,250,196, in view of McDonald, U.S. Patent 3,062,662. Friello discloses a product having a center layer of a semi-liquid material, including pectin (column 2, lines 25-34), surrounded by a layer of gum (abstract) but does not disclose an outer layer of a hard candy material. However, it was well known in the art to coat gum with hard candy material as evidenced by McDonald (column 2, lines 37-43). Therefore, it would have been obvious to coat the gum of Friello as taught by McDonald in order to provide the product with an additional appealing texture and/or flavor and also to extend the period of time over which the product could be enjoyed.

Claim 24 is a product by process claim and "even though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process." In re Thorpe, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed. Cir. 1985).

**(10) Response to Argument**

Although McDonald indicates that the bubble gum partially melt and mix with the candy, as appellant argues, McDonald also clearly discloses that the bubble gum is disposed in the center of the "candy coating" (col. 2, lines 42-43) and that the candy syrup forms a "suitable coating" over the intermixed confection (col. 2, lines 62-63), thereby leading to the conclusion that the candy syrup may intermix with the gum as well as coat the gum. The coating provides the gum with an attractive form tailored to a child's liking (col. 1, lines 20-28). Thus, there is motivation for coating the gum product of Friello in order to make it more attractive to children.

Once coated, the gum product of Friello will possess water impenetrability thereby contradicting appellant's belief that the water impenetrability of the gum base material in Friello could be disrupted (page 7 of appellant's brief).

Appellant's additional contentions on page 6 of the brief are without merit. Appellant refers to "potential" issues of leaking or moisture migration of the liquid center in Friello and unpredictable disruption of the gum layer and jeopardizing the integrity of the gum in Friello as a result of coating the gum therein. However, these assertions are based upon mere conclusion without any supporting factual evidence of record. Thus, a prima facie case of obviousness has been established and has not been successfully refuted by appellant.

**(11) Related Proceeding(s) Appendix**

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Arthur L. Corbin

Conferees:

Milton Cano



Glenn Caldarola



Any inquiry concerning this communication or earlier communications from the examiner should be directed to Arthur L. Corbin whose telephone number is (571) 272-1399. The examiner can normally be reached on Monday-Friday from 10:30 AM to 8:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton I. Cano, can be reached on (571) 272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should


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you have questions on access to the Private PAIR system, contact the Electronic

Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read 'Arthur L. Corbin', with a long horizontal line extending to the right.

Arthur L. Corbin  
Primary Examiner  
Art Unit 1761